



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO LEONARD COMPANIES, LTD.

**FOR
PROPERTY LOCATED AT LATITUDE 36° 49' 15"N AND LONGITUDE
82° 08' 53"W**

Virginia Pollutant Discharge Elimination System Permit No. VAR10H885

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Leonard Companies, Ltd. regarding the permitted property located at the intersection of VA State Routes 19 and 58 at approximate latitude 36° 49' 15"N and longitude 82° 08' 53"W for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
7. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
8. "Leonard Companies, Ltd." means Leonard Companies, Ltd., a company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Leonard Companies, Ltd. is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Site" means the property located at the intersection of VA State Routes 19 and 58 at approximate latitude 36° 49' 15"N and longitude 82° 08' 53"W in Russell County, VA, from which discharges of stormwater associated with construction activity occur.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Registration Statement" means a registration statement for coverage under the State Permit.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
14. "State Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
15. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.

16. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC2 5-870-10.
17. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
18. "SWRO" means the Southwest Regional office of DEQ, located in Abingdon, Virginia.
19. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VESCP authority" means an authority approved by the board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. 9 VAC 25-870-10.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
25. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear

projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.

26. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
27. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Leonard Companies, Ltd. is the owner and operator of the site located at the intersection of VA State Routes 19 and 58 at approximate latitude 36° 49' 15"N and longitude 82° 08' 53"W, located in Russell County, Virginia, which discharges stormwater associated with construction activity.
2. DEQ is the VSMP authority for Russell County.
3. Russell County is the VESCP authority and the Clinch Valley Soil and Water Conservation District is the VESCP plan-approving authority for Russell County.
4. Stormwater from construction activities at the Leonard Companies, Ltd. Site is discharged to North Fork Moccasin Creek, which is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
5. On September 14, 2015, June 27, 2016, February 23, 2017 and March 31, 2017, DEQ staff conducted construction stormwater inspections of the Leonard Companies, Ltd. Site located at approximate latitude 36° 49' 15"N and longitude 82° 08' 53"W. During those inspections, DEQ staff observed the following:
 - a. On September 14, 2015, June 27, 2016, February 23, 2017 and March 31, 2017, during DEQ Site inspections at the Site, DEQ staff documented that land-disturbing activities greater than one acre had occurred at the Site in areas subject to stormwater runoff without 2014 Permit coverage or VSMP authority approval.

Va. Code § 62.1-44.15:34(A) states in part that: "A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance."

- b. On September 14, 2015 and June 27, 2016, DEQ staff observed that there was no approved stormwater management plan for the land-disturbing activities at the Site.

Va. Code § 62.1-44.15:34(A) states in part: “A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance.”

9 VAC 25-870-54(C) states: “A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.”

- c. On September 14, 2015, June 27, 2016, February 23, 2017, and March 31, 2017, DEQ staff observed that soil stabilization measures had not been applied to denuded areas that were dormant for more than fourteen days. DEQ staff also observed that the EC-2 matting had not been installed in all locations as required by the approved erosion and sediment control plan.

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9 VAC 25-840-40(1) of the Erosion and Sediment Control Regulations states: “Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days.”

- d. On September 14, 2015, June 27, 2016, February 23, 2017 and March 31, 2017, DEQ staff observed that no perimeter sediment trapping measures were installed or installed controls were non-functional down gradient of land disturbing activity.

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9 VAC 25-840-40(4) of the Erosion and Sediment Control Regulations states: “Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes

place.”

- e. On September 14, 2015, June 27, 2016, February 23, 2017 and March 31, 2017, DEQ staff observed that no functional inlet protection was in place at the cross pipes installed on-site.

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9 VAC 25-840-40(10) of the Erosion and Sediment Control Regulations states: “All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.”

- f. On March 31, 2017, DEQ staff observed that rip rap had not been installed in the cut ditches from approximate L264 to L258 and north of the cross pipe nearest to Route 19 on the north end of the project as required by the approved erosion and sediment control plan.

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9 VAC 25-840-40(11) of the Erosion and Sediment Control Regulations states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

- g. On February 23, 2017 and March 31, 2017, DEQ staff observed that the level spreader at L264 and the level spreader nearest to Route 19 on the north end of the project had not been installed as required by the approved erosion and sediment control plan. Also, the level spreaders at the outlets of the cross pipes at L212 and L209 had not been installed in the locations shown on the approved erosion and sediment control plan, but rather a single level spreader was installed at the outlet of the rip rap ditch discharging from the two cross pipes. In addition, almost all components of the installed level spreaders were not installed in accordance with the approved erosion and sediment control plan.

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control

Law and regulations must be designed and implemented during construction activities.”

6. SWRO issued a Warning Letter for the violations noted above in C(5)(a)-(e) as follows: WL No. WL-026-0915-SC, issued September 18, 2015.
7. SWRO issued a Notice of Violation for the violations noted above in C(5)(a)-(g) as follows: NOV No. 005-0417-SC, issued April 20, 2017.
8. Based on the results of the September 14, 2015, June 27, 2016, February 23, 2017 and March 31, 2017 inspections, the Board concludes that Leonard Companies Ltd. violated Va. Code § 62.1-44.15:34(A), 9 VAC 25-840-40(1), 9 VAC 25-840-40(4), 9 VAC 25-840-40(10), 9 VAC 25-840-40(11), 9 VAC 25-870-54(B), and 9 VAC 25-870-54(C) by discharging stormwater from a construction activity as described in paragraphs C(5)(a)-(g) of this Order.
9. DEQ approved Leonard Companies Ltd.’s stormwater management plan for this Site on January 11, 2017, correcting violation C(5)(b).
10. On May 1, 2017 DEQ staff visited the Site to check on the progress of corrective actions. As of May 1, 2017, soil stabilization measures, including EC-2 matting, have been applied to all areas of land disturbance, correcting the violation described in paragraph C(20)(c) and eliminating the need to correct violations C(5)(d) and (e).
11. On May 3, 2017, DEQ staff met with Leonard Companies, Ltd. representatives to discuss the current site conditions.
12. On January 28, 2016, Leonard Companies, Ltd. submitted an inaccurate registration statement which listed the wrong operator. DEQ put a hold on 2014 Permit coverage issuance for the Site until Leonard Companies, Ltd. submitted an accurate registration statement. On May 12, 2017, Leonard Companies, Ltd. submitted a corrected registration statement. On May 25, 2017, DEQ granted Leonard Companies, Ltd. coverage under the 2014 Permit for discharges of stormwater from construction activities, assigning it registration number VAR10H885, correcting the violation described in paragraph C(5)(a), above.
13. On May 15, 2017, DEQ staff visited the Site to check on the progress of corrective actions and to provide compliance assistance. As of May 15, work on the rip rap ditches had been completed, correcting the violation described in paragraph C(5)(f).
14. The level spreaders have been installed in accordance with the erosion and sediment control plan, correcting the violation described in paragraph C(5)(g).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders Leonard Companies, Ltd., and Leonard Companies, Ltd. agrees to pay a civil charge of \$7,130 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Leonard Companies, Ltd. shall include its Federal Employer Identification Numbers (FEIN) (~~54~~ **192758** /) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Leonard Companies, Ltd. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Leonard Companies, Ltd. for good cause shown by Leonard Companies, Ltd., or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 005-0417-SC dated April 20, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Leonard Companies, Ltd. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Leonard Companies, Ltd. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Leonard Companies, Ltd. declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to

any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Leonard Companies, Ltd. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Leonard Companies, Ltd. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Leonard Companies, Ltd. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Leonard Companies, Ltd. shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Leonard Companies, Ltd.. Nevertheless, Leonard Companies, Ltd. agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Leonard Companies, Ltd. has completed all of the requirements of the Order;
- b. Leonard Companies, Ltd. petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Leonard Companies, Ltd.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Leonard Companies, Ltd. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Leonard Companies, Ltd. and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Leonard Companies, Ltd. certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Leonard Companies, Ltd. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Leonard Companies, Ltd.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Leonard Companies, Ltd. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3rd day of January, 2018.


Jefferson Reynolds, Director of Enforcement
Department of Environmental Quality

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Leonard Companies, Ltd. voluntarily agrees to the issuance of this Order.

Date: 10-4-17 By: DAVID LEONARD, GEN. PARTNER
(Person) (Title)
Leonard Companies, Ltd.

Commonwealth of Virginia

~~City~~/County of Russell

The foregoing document was signed and acknowledged before me this 4th day of
OCTOBER, 2017, by David A. Leonard who is
General Partnership of Leonard Companies, Ltd., on behalf of the company.

Betsy A. Brown
Notary Public

168576
Registration No.

My commission expires: 12/31/2019

Notary seal:

